# Lucky Harvest Sdn Bhd & Ors v MBf Factors Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1–12–113 OF 1999
RAUS J
14 JUNE 2004

*Civil Procedure — Appeal — Appeal from sessions court — Whether session court judge erred in her judicial appreciation of the evidence*

*Contract — Breach — Claim for repayment of moneys paid — Plaintiffs claimed recovery of sum which arose as a result of balance of a mistaken credit twice the amount of RM226,334.86 into first defendant's account — Whether plaintiffs entitled to claim amount from defendants' money held by plaintiffs — Whether defendants could seek a refund from plaintiffs*

There are two appeals before the court against the decision of the learned sessions court judge. One was against the dismissal of the plaintiffs' claim and the second was by the defendants against the dismissal of the defendants' counterclaim. The plaintiffs have a business of factoring and the first defendant was a customer. They entered into a factoring agreement and the second, third and fourth defendants agreed to indemnify the plaintiffs against loss whatever is owing to the plaintiffs by the first defendant. The plaintiffs claimed recovery of the sum which arose as a result of the balance of a mistaken credit twice of the same amount of RM226,334.86 into the account of the first defendant. The defendants have a credit balance of RM296,709.70 as at 1 January 1992 and claimed that the plaintiffs had not made a wrongful payment to the first defendant's account and thus the plaintiffs were not entitled to deduct the sum of RM253,457.84 from the first defendant held by the plaintiffs. The defendants sought a refund from the plaintiffs. The issues in contention before the sessions court were (1) whether there was double payment from RM226,334.86; (2) whether RM226,334.86 was payment received from Premier Decoration as payment in para 6 of the statement of claim and (3) whether there was a debit balance of RM225,180. The central issue before the High Court was whether the learned sessions court judge erred in her judicial appreciation of the evidence on all three issues.

**Held**:

(1) The first issue was the alleged double payment was for the sum RM226,334.86. If that was true, the sum would be RM226,334.86 x 2 = RM452,669.72. But the first defendant was never paid the sum of RM452,669.72. The first defendant was only paid RM298,902 (see para 9).

(2) The witness for the plaintiffs, PW1 admitted in cross-examination that the sum of RM226,334.86 was not for the three (3) invoices in PDO 131/96, PDO 132/91 and PDO 134/91 as pleaded in para 6 of the statement of claim. PW1 said, 'Yes, it is not correct payment of RM226,334.86 is for the three invoices' (see para 10).

(3) PW1 during cross-examination could not explain how the debit balance occurred on 1 January 1992. She said, 'If you add all the debit minus credit entry the balance will be obtained at 16 January 1992 …'. But

the issue was whether there was a debit balance of RM225,189 on 1January 1992 and not on 16 January 1992. Thus, based on the plaintiffs' witness' testimony alone, the learned judge was right to dismiss the plaintiffs' claim (see paras 11 and 12 ).

(4) However, the learned sessions court judge had misdirected or erred in her finding with regard to the defendants' counterclaim. Since the plaintiffs had failed to prove their claim against the defendants for double payment of RM298,902, the plaintiffs surely could not deduct or recover from the first defendant's account the sum of RM253,457.84. Therefore, the defendants were entitled in law to recover from the plaintiffs the sum of RM253,457.84 and a refund as of right from the plaintiffs when the learned sessions court judge dismissed the plaintiffs' claim. The court allowed the defendants' counterclaim for refund of RM250,000 together with interest and costs as prayed for in para 21 of the counterclaim (see paras 13 and 14)

**[Bahasa Malaysia summary**

Terdapat dua rayuan di hadapan mahkamah ini terhadap keputusan hakim mahkamah sesyen yang arif. Satu adalah terhadap penolakan tuntutan plaintif-plaintif dan keduanya adalah oleh defendan-defendan terhadap penolakan rayuan balas defendan-defendan. Plaintif-plaintif mempunyai perniagaan pemfaktoran dan defendan pertama merupakan pelanggan plaintif-plaintif. Mereka telah memasukki perjanjian pemfaktoran dan defendan-defendan kedua, ketiga dan keempat telah bersetuju untuk menanggung rugi plaintif-plaintif terhadap sebarang kerugian atau apa yang terhutang kepada plaintif-plaintif oleh defendan pertama. Plaintif-plaintif menuntut pengembalian jumlah yang diakibatkan oleh baki kredit dua kali ganda jumlah RM226,334.86 tersilap yang dimasukkan ke dalam akaun defendan pertama. Defendan-defendan mempunyai baki kredit sebanyak RM296,709.70 pada 1 Januari 1992 dan menuntut bahawa plaintif-plaintif tidak membuat bayaran yang salah kepada akaun defendan pertama dan oleh itu, plaintif-plaintif tidak berhak mengambil jumlah RM253,457.84 daripada defendan pertama yang dipegang oleh plaintif-plaintif. Defendan-defendan menuntut bayaran balik wang itu daripada plaintif-plaintif. Isu-isu yang dipertikaikan di hadapan mahkamah sesyen adalah (1) sama ada terdapat bayaran dua kali daripada RM226,334.86; (2) sama ada RM226,334.86 adalah bayaran yang diterima daripada Premier Decoration untuk bayaran di dalam perenggan 6 penyata tuntutan dan (3) sama ada terdapat baki debit sebanyak RM225,180. Isu utama di hadapan Mahkamah Tinggi adalah sama ada hakim mahkamah sesyen yang arif terkhilaf di dalam pertimbangan keterangan kehakiman beliau pada ketiga-tiga isu itu.

**Diputuskan**:

(1) Isu pertama adalah bayaran dua kali yang dikatakan untuk jumlah RM226,334.86. Jika itu betul, jumlahnya akan menjadi RM226,334.86 x 2 = RM452,669.72. Akan tetapi defendan pertama tidak pernah dibayar jumlah RM452,669.72. Defendan pertama hanya dibayar RM298,902 (lihat perenggan 9).

(2) Saksi untuk plaintif-plaintif, PW1 mengaku di dalam pemeriksaan balas bahawa jumlah RM226,334.86 bukan untuk tiga invois di dalam PDO 131/96, PDO 132/91 dan PDO 134/91 seperti yang diplidkan di dalam perenggan 6 penyata tuntutan. PW1 berkata, 'Yes, it is not correct payment of RM226,334.86 is for the three invoices' (lihat perenggan 10).

(3) PW1 semasa diperiksa balas tidak dapat menerangkan bagaimana baki debit berlaku pada 1 Januari 1992. Beliau berkata, 'If you add all the debit minus credit entry the balance will be obtained at 16 January 1992 …'. Akan tetapi isu adalah sama ada terdapat baki debit RM225,189 pada 1 Januari 1992 dan bukan pada 16 Januari 1992. Oleh itu, berdasarkan keterangan saksi plaintif-plaintif sahaja, hakim yang arif betul di dalam menolak tuntutan plaintif-plaintif (lihat perenggan 11 dan 12).

(4) Walau bagaimanapun, hakim mahkamah sesyen yang arif telah salah arah atau terkhilaf di dalam keputusan beliau berkaitan tuntutan balas defendan-defendan. Memandangkan bahawa plaintif-plaintif gagal membuktikan tuntutan mereka terhadap defendan-defendan untuk bayaran dua kali RM298,902, plaintif-plaintif tidak dapat mengambil atau mendapat kembali jumlah RM253,457.84 daripada akaun defendan pertama. Oleh itu, defendan-defendan berhak di sisi undang-undang untuk mendapat kembali jumlah RM253,457.84 daripada plaintif-plaintif dan berhak untuk mendapatkan bayaran balik daripada plaintif-plaintif apabila hakim mahkamah sesyen menolak tuntutan plaintif-plaintif. Mahkamah membenarkan tuntutan balas defendan-defendan untuk bayaran balik RM250,000 bersama faedah dan kos seperti yang dipohon di dalam perenggan 21 tuntutan balas (lihat perenggan 13 dan 14).]

**Notes**

For cases on appeals from session court, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 590-591.
For cases on claim for repayment of moneys paid, see 3(2) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 2249-2250.
For appeals to High Court, see 1 *Halsbury's Laws of Malaysia*, paras [10.11–005] to [10.11-013].

**Appeal from**: Saman 52-2010-1996 (Sessions Court, Kuala Lumpur)

*Brian Foong (Cheang & Ariff) for the appellants*
*YT Ling (Lee, Ling & Partners) for the defendants.*

**Raus J**:

APPEALS

**[1]** There are two appeals before the court against the decision of the learned sessions court judge dated 23 September 1999. In Civil Appeal No.

R3–12–93–99, the appeal was by the plaintiff against the dismissal of the plaintiff's claim. In Civil Appeal No. R1–113–99, the appeal was by the defendants against the dismissal of the defendants' counterclaim. The two appeals were subsequently consolidated.

FACTS

**[2]** The plaintiff was at all material times a private limited company carrying, inter alia, the business of factoring. The first defendant was a customer of the plaintiff. On 31 June 1991, the plaintiff and the first defendant entered into a Non-Resource Export Factoring Agreement ('the Factoring Agreement'). In consideration of the plaintiff entering into the Factoring Agreement with the first defendant, the second, third and fourth defendants jointly and severally agreed to indemnify the plaintiff against loss whatever there is money and owing by the first defendant to the plaintiff.

**[3]** In the Factoring Agreement, it was expressly agreed and/or was within the express contemplation of the parties that the first defendant would offer to assign to the plaintiff identifiable invoices made out to the Premier Company (UK) Ltd and Premier Decorations Ltd, both being companies resident in United Kingdom. It was further expressly agreed and/or within the express contemplation of the parties that the factoring transactions would be carried on in accordance with the international factoring rules and custom, whereby the plaintiff would reassign the invoices purchased to an Import Factor resident in the debtor's jurisdiction in the United Kingdom, namely Alex Lawrie Factors Ltd. The Lawrie Factors Ltd would directly receive payments from Premier Company (UK Ltd) and Premier Decorations Ltd as and when payments become due and remit these to the plaintiff less the Lawrie Factors Ltd's commission. The sum remitted would be credited to the relevant seller's statement of account in reduction of amounts due and owing by the first defendant to the plaintiff arising from early payments made together with all other changes, fees and discounts contemplated by the Factoring Agreement.

*The plaintiff's case*

**[4]** The plaintiff's claim was essentially a recovery of the balance of a sum which arose as a result of the balance of a mistaken credit twice of the same amount of RM226,334.86 into the account of the first defendant. According to the calculation of the plaintiff that a sum of RM24,389 was due to the plaintiff being the debit balance in the first defendant's account when the factoring transaction lapsed and no further payments were received from the first defendant's overseas buyers or customers. Thus, the plaintiff was claiming the said sum of RM24,389 as at 16 February 1993 and interest thereon at 13.50% pa from 17 February 1993 until date of judgment and thereafter at the rate of 8%pa until full settlement.

*Defendant's case*

**[5]** The defendant's case was that the first defendant has a credit balance of RM296,709.70 as on 1 January 1992 with the plaintiff. The defendants

stated that based on this credit balance on 1 January 1992, the plaintiff paid and the first defendant received payment of RM298,902. The defendants claimed that the plaintiff had not made a wrongful payment to the first defendant on the sum of RM298,902 and there was no double payment made by the plaintiff. Accordingly, the plaintiff was not entitled to deduct from the first defendant the sum of RM253,457.84 held by the plaintiff. Thus, the defendants in their counterclaim were seeking a refund of RM253,457.84 from the plaintiff on the ground of wrongful conversion of the monies from the defendants. However, by consent between the plaintiff and the defendants, the amount claimed by the first defendant for refund was limited to RM250,000 in order to fall within the jurisdiction of the sessions court.

*Agreed issues to be tried*

**[6]** At the trial, both the plaintiff and the defendants agreed to three issues to be decided upon by the learned sessions court judge, namely:

'(i) Pihak tidak pertikaikan bayaran RM226,334.86 telah dikreditkan. Apa yang dipertikaikan adalah sama ada terdapat double payment dari jumlah RM226,334.86 tersebut.

(ii) Sama ada jumlah RM226,334.86 adalah bayaran yang diterima dari Premier Decoration untuk bayaran di dalam perenggan 6 penyata tuntutan.

(iii) Sama ada terdapat baki debit sebanyak RM225,180 iaitu amaun di dalam MS10D.'

*Decision of the sessions court*

**[7]** After a full trial, the learned sessions court judge ruled against the plaintiff on all the three issues and accordingly dismissed the plaintiff's claims for the balance sum of RM24,389.68. The learned sessions court judge also dismissed the defendants' counterclaim for a refund of RM250,000.

FINDINGS OF THIS COURT

**[8]** The central issue before me is whether the learned sessions court judge had erred in her judicial appreciation of evidence on all the three issues. With respect, I do not think so.

**[9]** On the first issue, the alleged double payment was for the sum RM226,334.86. If that is true, the sum would be RM226,334.86 x 2 = RM452,669.72. But the first defendant was never paid the sum of RM452,669.72. The first defendant was only paid RM298,902. So, how can the sum of RM298,902 be a double payment?

**[10]** On the second issue, the witness for the plaintiff, PW1 admitted in cross-examination that the sum of RM226,334.86 was not for the three (3) invoices in PDO 131/96, PDO 132/91 and PDO 134/91 as pleaded in para 6 of the statement of claim. PW1 said, 'Yes, it is not correct payment of RM226,334.86 is for the three invoices'.

**[11]** On the third issue, PW1 during cross-examination could not explain how the debit balance occurred on 1 January 1992. She said, 'If you add all

the debit minus credit entry the balance will be obtained at 16 January 1992 …'. But the issue is whether there is a debit balance of RM225,189 on 1January 1992 and not on 16 January 1992.

**[12]** Thus, based on the plaintiff's witness' testimony alone, the learned judge was right to dismiss the plaintiff's claim. I find no error on the part of the learned sessions court judge in dismissing the plaintiff's claim. Accordingly, the plaintiff's appeal is dismissed with costs.

**[13]** However, I am of the view that the learned sessions court judge had misdirected or erred in her finding with regard to the defendants' counterclaim. To me, since the plaintiff had failed to prove their claim against the defendants for double payment of RM298,902, the plaintiff surely cannot deduct or recover from the first defendant's account the sum of RM253,457.84. Therefore, the defendants are entitled in law to recover from the plaintiff the sum of RM253,457.84 and a refund as of right from the plaintiff when the learned sessions court judge dismissed the plaintiff's claim.

**[14]** It is for that reason that I allowed the defendants' counterclaim for refund of RM250,000 together with interest and costs as prayed for in para 21 of the counterclaim.

*Order accordingly.*

Reported by Chew Phye Ken